

BRB No. 90-1887 BLA

PETER BUSHA)
)
 Claimant-Petitioner)
)
 v.)
)
 DIRECTOR, OFFICE OF WORKERS') DATE ISSUED:
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Daniel G. Walter (Pawlowski, Creany & Tulowitzki), Ebensburg, Pennsylvania, for claimant.

Before: STAGE, Chief Administrative Appeals Judge, DOLDER, Administrative Appeals Judge, and CLARKE, Administrative Law Judge.*

PER CURIAM:

Claimant appeals the Decision and Order (89-BLO-146) of Administrative Law Judge Daniel L. Leland denying waiver of recovery of overpayment of interim benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 et seq. (the Act). The record reflects an overpayment of \$37,925.10, and the administrative law judge

accepted the concession of the Director, Office of Workers' Compensation Programs (the Director),

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

that claimant was without fault in creating the overpayment. The administrative law judge also found that recovery of the overpayment would neither defeat the purpose of Title IV of the Act nor be against equity or good conscience, and thus found that waiver of recovery of the overpayment was not proper. See 20 C.F.R. §410.561 et seq. Claimant appeals, contending that the administrative law judge erred in denying waiver of recovery of the overpayment. The Director has not participated in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

Claimant's sole argument on appeal is that recovery of the overpayment would be against equity and good conscience pursuant to Section 410.561f, as the

overpayment resulted from claimant's reliance upon "erroneous information" from the deputy commissioner's office, i.e., the deputy commissioner's initial determination of entitlement to benefits. See Director's Exhibits 1, 2. We disagree. An initial determination of entitlement does not qualify as the type of "erroneous information" to which Section 410.561f refers. See Knope v. Director, OWCP, BLR , BRB No. 88-3313 (Dec. 27, 1990); Nelson v. Director, OWCP, 14 BLR 1-159 (1990); Weis v. Director, OWCP, BLR , BRB No. 88-2827 BLA (Nov. 28, 1990); Potisek v. Director, OWCP, 14 BLR 1-87 (1990)(en banc)(Brown, J., dissenting). As claimant does not challenge the administrative law judge's finding that recovery would not deprive claimant of income required for ordinary and necessary living expenses and that claimant did not relinquish a valuable right or change his position for the worse in reliance upon his receipt of interim benefits, we hereby affirm the administrative law judge's finding that recovery would neither defeat the purpose of Title IV of the Act nor be against equity and good conscience, as unchallenged on appeal. 20 C.F.R. §410.561a et seq. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

Accordingly, the administrative law judge's Decision and Order denying waiver of recovery of overpayment of interim benefits is affirmed.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

DAVID A. CLARKE, JR.
Administrative Law Judge